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Supreme Court of the United States

October Term, 1955

No. 635

ASSOCIATED MUSICIANS OF GREATER NEW YORK, LOCAL 802, AMERICAN FEDERATION OF MUSICIANS, AFL, and AL MANUTI, its Agent,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioners herein pray that a writ of certiorari be issued to review the decree of the United States Court of Appeals for the Second Circuit, entered on November 17, 1955, which granted enforcement of an order of the National Labor Relations Board, finding the petitioners guilty of certain unfair labor practices and requiring the petitioners to cease and desist from such practices.

Opinions Below

The opinion of the Court of Appeals is reported at 226 F. 2d 900, and is set out in Appendix "A", *infra*, pp. 24-36. The opinion of the National Labor Relations Board (herein-

after referred to as the "Board") is reported at 110 N. L. R. B. No. 269. That opinion and the intermediate report of the Trial Examiner, upon which it is based, are set out at pages 113-159 of the Joint Appendix [1] as printed for the use of the Court below, nine copies of which are being filed with this petition, in accordance with Rule 23, subdivision 1(i) of the Rules of the Supreme Court.

Jurisdiction

The decree to be reviewed is dated and was entered on November 17, 1955. The jurisdiction of this Court is invoked under Title 28, U. S. C., Section 1254.

Questions Presented for Review

1. Can there be any violation of Section 8(b)(4)(A) of the National Labor Relations Act in the absence of an actual strike or a concerted refusal by employees of a secondary employer to perform work in the course of their employment?

2. May the Board predicate a finding that a labor union has violated Section 8(b)(4)(A) of the National Labor Relations Act upon activities of the Union which were directed to secondary employers, and not to their employees?

3. Is picketing carried on by a labor union at a location where the primary employer regularly carries on its business on the premises of a secondary employer a primary or a secondary activity, and does it violate Section 8(b)(4)(A) of the Act when the picket signs clearly show that the dispute is with the primary employer?

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[1] Hereinafter the letters "J.A." will be used to refer to the Joint Appendix.

Statutory Provision Involved

The principal statute involved is the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Section 151, *et seq.*), and more particularly Section 8(b)(4)(A) thereof, which provides as follows:

> "Section 8(b) It shall be an unfair labor practice for a labor organization or its agents—
>
> • • •
>
> "(4) to engage in or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; • • •."

Statement of the Case

The Petitioner Union has been engaged in an economic labor dispute with Gotham Broadcasting Corp. (hereinafter referred to as "Gotham"), the proprietor of radio station WINS in New York City (J.A. 307-308). About 20 percent of Gotham's annual total revenue is derived from and in connection with radio broadcasts of baseball games played at the Yankee Stadium (J.A. 310; 46-48). Gotham also derives additional revenue from weekly broadcasts of exhibition boxing matches at the Eastern Parkway Rink in Brooklyn (J.A. 310; 41). On the days when such broadcasts take place, Gotham has employees, microphones

and amplifiers at the Stadium and at the Rink (J.A. 310-311; 23-24; 32-33).

On various days while ball games were being broadcast from the Stadium, Petitioner Union peacefully picketed on the streets around the ball park (J.A. 343; 114). Although the season started on April 15, 1954, picketing was conducted on April 10th and 11th because there were broadcasts of two Yankee-Dodger exhibition games on those days (J.A. 83). At all times when the picketing was taking place, Gotham's employees and equipment, as well as the great majority of the other employees working at the ball park, were already in the Stadium (J.A. 23-24; 27; 86-87; 120-121). The Board has found that "none of the employees of the secondary employers ceased work as a result of the picketing" (J.A. 343). It is also undisputed that even though most of the employees working at the Stadium are members of various labor unions, the Petitioners never requested any of these unions to have its members strike or refuse to pass the pickets (J.A. 214-215). The record further shows that most of the deliveries to the Stadium and its concessionaires were made at hours prior to that of the picketing, and as to those deliveries made while the picketing was on the pickets made no attempt to stop them (J.A. 73; 200).

Before the picketing at the Stadium began, a representative of the Union had sent a telegram to one of the owners of the Yankees whom he knew personally, asking him to use his "good offices and influence with the management" of WINS to settle the dispute between it and the Union quickly and amicably (J.A. 312; G. C. Ex. 8, J.A. 100; 212). In addition, the Yankees had made a contract with a Major Sutherland to have his Seventh Regiment Band (a civilian group of professional musicians) play at the opening day ceremonies at the Stadium (J.A. 313; 100; 129). Admittedly, Sutherland was not an employee of Yankees, but "an independent contractor", and "the band musicians" were

"his employees" (J.A. 323). Sutherland, who is a member of the Union, did not have his band play at the ceremonies on April 15, 1954, because he would not go into the Stadium while the picketing was going on there (J.A. 130; 134; 144).

The total picketing at the Eastern Parkway Rink lasted for less than one hour on only one day. Here, too, not a single employee of the Rink or of any other secondary employer operating in connection with it failed to come in to work as the result of the picketing (J.A. 158). As found by the Trial Examiner, "Parkway yielded to the Respondents before its employees had an opportunity to see the picket signs" (J.A. 323). At the suggestion of Parkway that it would stop WINS from broadcasting the fights and that it would put it in writing, the Union agreed to withdraw the pickets (J.A. 316-317; G. C. Ex. 10).

In the picketing both at the Stadium and at the Rink, the picket signs clearly showed that the Union's dispute was with WINS. The signs made no reference to any of the secondary employers, only to WINS (J.A. 311; 38).

Basis for Federal Jurisdiction

The United States Court of Appeals for the Second Circuit had jurisdiction in this case pursuant to Section 10(e) of the National Labor Relations Act, which empowers the Board to petition any United States Court of Appeals within the circuit wherein the unfair labor practice in question occurred, for the enforcement of the Board's order.

Reasons for Granting the Writ

As shall be shown below, the Court of Appeals has decided important questions of Federal Law—as set forth above in "Questions Presented for Review"—which have not been, but should be settled by this Court. In addition, as shall be shown below, the decision of the Court of Appeals

is in conflict with decisions of the Courts of Appeals for the Seventh, Fifth and District of Coluumbia Circuits, as well as with prior decisions of the Court of Appeals for the Second Circuit itself.

ARGUMENT

I.

In the absence of an actual strike or a concerted refusal by employees of a secondary employer to work in the course of their employment there can be no violation of Section 8(b)(4)(A) of the Act.

The Board, in its Decision and Order herein, made a finding that "the picketing was peaceful, and *none of the employees of the secondary employers ceased work as a result of the picketing*" (J.A. 343; emphasis supplied).

The Court below has made a specific ruling that the words "induce and encourage", as used in Section 8(b)(4)(A) of the National Labor Relations Act, do not require an actual strike or a concerted refusal to work by employees of a secondary employer in order for that Section to be violated. This important issue as to the meaning of this Section of the Act has never been passed upon, and should be settled, by this Court. This is particularly true since contrary decisions on this issue have been rendered by the Court of Appeals for the Seventh Circuit and by the Court of Appeals for the Second Circuit itself.

The Seventh Circuit so held in its unanimous decision in *Joliet Contractors Ass'n* v. *N. L. R. B.*, 202 F. 2d 606, certiorari denied 346 U. S. 824. The headnote for this decision in the Federal Reporter states:

> "Provision of National Labor Relations Act declaring it to be unfair labor practice for union to

engage in or to induce employees of any employer to strike or engage in concerted refusal in course of their employment to handle any materials for purpose of forcing employer to cease using products of another producer, *is violated only when that objective is achieved* by engaging in a strike or by inducing or encouraging employees to strike or concertedly refuse in the course of employment to handle certain materials." (Emphasis supplied.)

The headnote for the same decision in 22 Labor Cases, Paragraph 67, 387, states:

"The 'secondary boycott' provisions of the Act prohibit a union from pursuing certain specified objectives by certain specified means, including inducement or encouragement of a strike or work stoppage. However, *union activity which might furnish inducement or encouragement of a strike or work stoppage does not fall within the prohibited means unless a strike or work stoppage actually results.* Even though a glaziers' union has the unlawful objective of prohibiting the use of preglazed sash in its district, the furtherance of that objective by the union * * * *is not in itself an unfair labor practice where those activities do not actually result in a strike or work stoppage.*" (Emphasis supplied.)

The opinion of the Court itself in the *Joliet* case states (p. 608):

"* * * *the objective sought to be accomplished by the union, while material, is alone not sufficient; it only becomes a violation when achieved in the manner specified,* that is, by engaging in a strike or by inducing or encouraging employees to do so or to engage in a concerted refusal in the course of

> their employment. While we agree, for reasons subsequently stated that the *Union activities referred to might furnish the inducement or encouragement* for employees to strike or to engage in a concerted refusal to work, *yet this would not constitute a violation in the absence of such strike or concerted refusal on the part of the employees 'in the course of their employment'.* The objective must be accomplished by the specific means which the section defines and not otherwise." (Emphasis supplied.)

In attempting to distinguish the *Joliet* case from the case at bar, the Court below said in its opinion:

> "No picketing was involved in that case, and the present issue was not decided. There the basis of decision was not whether the union's efforts were successful, but whether the actions induced or encouraged were concerted activities in the course of the employees' employment."

We submit that this purported distinction is without merit. Picketing is not a prerequisite to a violation of the Section in question. And a reading of the Seventh Circuit's opinion in the *Joliet* case makes it clear that the "concerted activity" referred to must be an actual strike or work stoppage.

The same holding was made by the Second Circuit itself as recently as June 28, 1955, in *Douds* v. *Local 50 Bakery and Confectionery Workers Union,* 224 F. 2d 49. Although that case involved Section 8(b)(4)(C) of the Act, the language with which we are here concerned is the same in both instances.

As in the case at bar, the record in the *Local 50* case established that no employees had refused to cross the

picket line. However, as the Second Circuit's opinion states (at p. 51):

> "The appellant argues that picketing 'inherently encourages' workers not to work behind the picket line, and that it must be 'presumed' that the appellee intended such consequences because one is 'held to intend the forseeable consequences of his conduct,' * * *."

The same contention was made by the Board in the instant case, when it stated in its brief to the Court below that "picketing at any place where employees work, tends by its very nature to induce employees not to cross or work behind the picket line", and that "the reluctance of workers to cross a picket line is notorious".

Rejecting this contention, the Second Circuit said in the *Local 50* decision (at p. 51):

> "*This argument might be persuasive if the picketing had had any consequences. It did not. No employee of Arnold's refused to cross the picket line or to cease work.* If the appellee is to be 'presumed' to intend the consequences which follow from its conduct, the inference to be drawn is that Local 50 did *not* intend to influence the employees of Arnold to cease work. *Similarly as to the drivers of the contract truck companies. No driver refused to cross the picket line or to transport Arnold's goods.* The trucks were operated by members of AFL unions affiliated with the appellee. *Had appellee intended to induce the drivers to engage in a concerted refusal to transport Arnold's bread, an effective means to accomplish it was available through action by these affiliated unions. But the testimony does not even suggest that an effort was made to induce them to act. Nor was any threat made or inducement offered to any employee of Arnold or of any employer.*"

So, in the case at bar, the picketing had no consequences. The Board itself has found that "none of the employees of the secondary employers ceased work as the result of the picketing" (J.A. 343). Here, too, most of the employees of the secondary employers were members of unions (J.A. 115; 309). And here there is affirmative, uncontradicted evidence by Petitioner Manuti that at no time did the Petitioners seek to enlist the aid of these other unions in having their members refuse to cross the picket line (J.A. 214-215). Nor is there even an intimation in the record in the instant case of "any threat made or inducement offered" to any employee of a secondary employer.

Nevertheless, although the Second Circuit rejected this contention by the Board in the *Local 50* case, it accepted it in the case at bar. This is emphasized when in its opinion herein it quotes with approval the statement that "the reluctance of workers to cross a picket line is notorious", the very argument it had previously rejected. Seeking to distinguish its own prior decision, the Court below said in its opinion herein:

> "It was there argued that since the union must be held to intend the foreseeable consequences of its conduct, an illegal intent might be 'presumed' from the mere fact of picketing. But we said that such a presumption was hardly valid where the consequences did not in fact follow. This is far from saying that under no circumstances can an illegal intent be found unless the intent is translated into an actual work stoppage."

We fail to see the distinction. The facts here were identical as the effect of the picketing. Why, then, does the Court below, in this case, rely upon the very presumption which it had previously rejected? Obviously, it is because the record here would not justify any finding of

illegal intent except for this presumption. And obviously, too, the Court is backing away from its prior decision that there can be no violation of Section 8(b)(4) where there is no actual work stoppage.

That such was the actual holding in the *Local 50* case is borne out by the District Court's decision in the same case (127 F. Supp. 534), which the Court of Appeals affirmed. The District Court acknowledged that the objective of the picketing in that case was one proscribed by Section 8(b)(4) but said (p. 536):

> "However, this objective alone is not sufficient • • •. To constitute an unfair labor practice on the part of the union • • • it must be shown not alone that this is the objective, but also that the activities of the respondent are such as 'to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use • • • transport, or otherwise handle' the goods produced by Arnold Bakers, Inc.
>
> "There has been *no evidence* that *the picketing* of the plant • • •, or any other activities of respondent, *actually produced such result.*" (Emphasis supplied.)

The Second Circuit once again held that secondary picketing does not violate Section 8(b)(4)(A) where no employees of secondary employers actually strike or refuse to perform services in its most recent decision in *N. L. R. B. v. Business Machine & Office Appliance Mechanics Conference Board, Local 459,* F. 2d , decided December 22, 1955, No. 23523.

In that case the Court expressly stated that "The picketing of Royal's customers was clearly secondary picketing with the object defined in Section 8(b)(4)(A)." It was also shown there that "In each instance the picketing • • •

took place before entrances used in common by employees, deliverymen and the general public." Nevertheless, the Court said that "the Taft-Hartley Act does not proscribe all secondary activity." Denying enforcement of the Board's order, the Second Circuit said:

> "It was not shown that the picketing had any tendency to induce the employees to strike or cease performing services. The evidence showed, on the contrary, that no employee refused to work or to use a Royal machine."

Continuing, the Court said:

> "It cannot be assumed that a picket line will prevent even unionized employees from crossing it when the union apparently intends that they shall cross and takes steps to make its intent plain. Such an assumption is even more doubtful when it appears, as it did here, that the employees unanimously disregarded the pickets and went to work."

That is precisely what happened in the case at bar. The employees unanimously disregarded the pickets and went to work (J.A. 343). Moreover, if the petitioner Union had intended to prevent employees from crossing the pickets it would at least have picketed when the great majority of the secondary employees were coming in to work. The evidence shows, on the contrary, that the picketing started each day when most of the employees were already in the Stadium and only when the gates were opened to the general public (J.A. 86-87; 120-121), as acknowledged by the Court below in its opinion herein. And the record further shows, without contradiction, that petitioners made no effort to enlist the aid of other unions whose members were working for the secondary employers, in order to get such employees to refuse to cross the pickets (J.A. 214-215).

The Second Circuit in its decision in the *Business Machine* case seeks to distinguish the case at bar from that

case by saying that in the instant case the Board had found that one of the objects of the picketing was "to induce the employees of secondary employers to engage in prohibited concerted activity". However, in view of the above facts such a finding by the Board is not only unsupported by any substantial evidence; it is directly contrary to the evidence. It is merely an assumption by the Board, which the Second Circuit expressly rejected in the *Business Machine* case, since it apeared, as here, that "the employees unanimously disregarded the pickets and went to work".

It is hardly necessary to point out that assumptions by the Board are not evidence. The Board has the burden of establishing affirmatively and by substantial evidence its findings of fact. See *N. L. R. B.* v. *Goodyear Footwear Corp.*, 7 Cir., 186 F. 2d 913, 916-917; *Ballston-Stillwater Knitting Co.* v. *N. L. R. B.*, 2 Cir., 98 F. 2d 758, 760. Here, there is no evidence to support the Board's finding and the case at bar is on all fours with the *Business Machine* case.

The General Counsel of the Board has also recognized, in *Administrative Decision of the General Counsel, Case No. 269* (March 3, 1952; CCH Labor Law Rep., Par. 11,476), that there can be no violation of Section 8(b)(4) when the employees of secondary employers do not actually engage in a strike or work stoppage. The primary employer there, a newspaper publisher, had had contracts with the union for many years. When the last contract expired, a strike was called for economic reasons. The union, seeking to get the employer's customers to withdraw their advertising, picketed the customers' premises. So, here, the Union has picketed the premises of Gotham's customers—the Yankee Stadium and the Eastern Parkway Rink. In the newspaper case, however, the picketing was not even being conducted at places where employees of the primary employer were performing work, whereas here Gotham's employees were performing work at the places picketed and Gotham had equipment there (J.A.

310; 23-24; 32-33). The General Counsel concluded in that case that "the pressure brought to bear upon company's customers was not illegal, there being no evidence that the union induced employees of said customers to take any action, concerted or otherwise", since "there is *no evidence that the employees* of the customers *were affected thereby or persuaded to take action*".

This Honorable Court should also pass upon this issue of the meaning of Section 8(b)(4) of the Act for the reason that the Court below, in its opinion, has read into that Section the words "attempt to" induce or encourage, although these words do not appear in the statute. This the Court below has done on what it claims was the intent of Congress in enacting the law. In so doing, however, the Court below has disregarded its own prior decision in *Rabouin, d/b/a Conway's Express* v. *N. L. R. B.*, 195 F. 2d 906, 911-912, wherein it said that in applying a statute as controversial as the Taft-Hartley Act, the Courts should not read into it anything but what Congress has expressly written into it.

That the word "induce" does not, in legal terminology, connote an *attempt* to cause certain action is clear from many statutes which made a sharp distinction between the two. For example, the New York Penal Law, Section 2460, provides that "Any person who shall *induce*, entice or procure, or *attempt to induce*, entice or procure any woman or girl for the purpose of prostitution" is guilty of a felony. If the interpretation of the word "induce" by the Court below were correct, it would have been unnecessary to include the words "attempt to" in the above statute.

II.

No finding of a violation of Section 8(b)(4)(A) of the Act may be predicated upon activities of a Union directed to secondary employers, and not to their employees.

The Court below based its ruling, in part, upon its finding that "here respondents sought to involve secondary employers in the dispute with Gotham". This refers to three incidents which we shall discuss below.

The first incident was a sending of a telegram by a representative of the Union to one of the Yankees' owners, telling him of the Union's dispute with Gotham and asking him if he "would use your good offices and influence with the management of this station so that this dispute may be settled quickly and amicably" (J.A. 312). The Second Circuit held in *Rabouin, d/b/a Conway's Express* v. *N. L. R. B.*, 195 F. 2d 906, that even a threat to strike directed to a neutral, secondary employer does not constitute a violation of Section 8(b)(4)(A). Certainly, therefore, a mere request to a secondary employer to use his good offices with the primary employer cannot be violative of the Section.

The second incident concerns Major Sutherland's Band. Sutherland had entered into a contract with Yankees to provide a band, to be conducted by him, to play music at the opening day ceremonies at the Stadium (J.A. 313; 100; 129). Whatever the reasons were for his not performing the contract, the fact is, as found by the Board itself, that Sutherland was not an employee of Yankees, but an "independent contractor", and "the band musicians" were "his employees" (J.A. 323). There is no proof in the record, nor is it claimed, that any pressure was put on any of the band members—the employees of employer Sutherland—not to play. Nor is there any proof in the

record, and it is not claimed, that any of the Sutherland's employees quit work in concert or refused to perform any service. If the failure of the Band to perform was due to any pressure or activity on the part of the Union or its agents, it was pressure or activity directed solely at the employer, Sutherland, not at any employees.

The third incident relates to the Eastern Parkway Rink, which stopped Gotham from broadcasting its boxing exhibitions as soon as the Union began to picket at the Rink. Here, too, if any pressure was exerted it was on the employer, Parkway, and not on any employees. Parkway's Vice-President, Locke, testified that not a single employee of Parkway or of any other secondary employer operating at or in connection with the Rink failed to come in to work as the result of the picketing (J.A. 158). In fact, the Trial Examiner found that "Parkway yielded to the Respondents before its employees had an opportunity to see the picket signs" (J.A. 323). It was Locke, the employer, who was distressed by the picketing. He testified that he suggested to a representative of the Union, Lewis, that he would stop Gotham from broadcasting and Lewis merely "acquiesced to it" (J.A. 316-317).

In each of the three incidents, therefore, whatever pressure was exerted, if any, was on employers, not on employees. However, it is clear from the language of Section 8(b)(4)(A), as well as from the decided cases, that pressure exerted upon a secondary *employer* to get him to cease doing business with the primary employer, even if successful, does not violate that Section. Unless the pressure takes the form of a strike or a concerted cessation of work in the course of their employment by employees of the secondary employer there is no violation of Section 8(b)(4)(A).

In *Rabouin, d/b/a Conway's Express* v. *N. L. R. B.*, 195 F. 2d 206, *supra*, the union had put pressure on "representatives of management or supervisors" of three

secondary employers to get them not to accept shipments from the primary employer. Holding that this did not constitute a violation of Section 8(b)(4)(A) of the Act, the Second Circuit said (at p. 911):

> "Petitioner also sees in the union's pressure on neutral employers to stop accepting his shipments a violation of the secondary boycott provisions. Section 8(b)(4)(A). *Even if the demands carried with them an implicit threat to strike, we cannot agree that they tended to induce or encourage the employees to engage in a strike or concerted refusal forcing the employer to cease doing business with another. The embargo on Rabouin's goods was the product solely of requests addressed to management or supervisory personnel.* • • • The union thus did not 'encourage the employees'." (Emphasis supplied.)

The Board itself so held in *Ferro-Co Corp.*, 102 N. L. R. B., No. 166, when it found that a union representative spoke to the secondary *employer* and induced him to cease using the primary employer's products. In that case a preliminary injunction under Section 10(l) of the Act was denied by the District Court for the Southern District of New York on the same ground in *Douds* v. *Sheet Metal Workers Int. Ass'n*, 101 F. Supp. 273; rehearing denied, 101 F. Supp. 970.

That Parkway may have acted as it did because it feared that customers might not come into the Rink because of the picketing is entirely immaterial, so long as the picketing did not induce any employees to strike or refuse to work. On this point, the Second Circuit said in *N. L. R. B.* v. *Service Trades Chauffeurs*, 191 F. 2d 65, 68:

> "Nor, if otherwise lawful, was the picketing unlawful because it induced or encouraged concerted conduct, not of the neutral employer's employees, but

of their customers since the *prohibition of Section 8(b)(4) does not extend to such solicitation of customers.*" (Emphasis supplied.)

As for the Sutherland incident, there could furthermore be no violation of Section 8(b)(4) because the musicians never entered into any employment at the Stadium on April 15, 1954. They did not appear at the Stadium and did not start to perform. For Section 8(b)(4) to be violated, there must be a strike or concerted refusal by employees to perform services "in the course of their employment", as explicitly held by the Seventh Circuit in *Joliet Contractors Ass'n* v. *N. L. R. B.*, 202 F. 2d 606, 608, certiorari denied 346 U. S. 824, *supra.*

The decision of the Court below is, therefore, in conflict with decisions of the Seventh Circuit, of the Second Circuit itself, and of the Board. The issue should be settled by this Court.

III.

The picketing by the Union herein was at locations where the primary employer regularly carries on its business. It was, therefore, primary activity and not violative of Section 8(b)(4)(A) of the Act.

In *Moore Dry Dock Co. (Sailors Union of the Pacific)*, 92 NLRB 547, the Board held that "picketing the premises of a secondary employer is primary if it meets" four specified conditions or criteria, which have been adopted and approved by several Courts. The record herein brings this case directly within these four criteria.

1. The first criterion is that "The picketing is strictly limited to times when the situs of the dispute is located on the secondary employer's premises." The record shows

that at all times when the Union picketed at the Yankee Stadium, Gotham had an engineer and equipment—an amplifier and microphones—at the ball park (J.A. 310-311; 23-24; 27; 170-171; 261-262). Gotham was thus already engaged in its broadcasting business at the Stadium when picketing occurred, so that "the situs of the dispute" was located there at the time. And the picketing ended before the broadcasting did on each of those days (J.A. 311; 170-171; 261-262).

The same was true of the less than one hour's picketing on one day at the Eastern Parkway Rink. There also, Gotham had an amplifier and microphones and 2 or 3 employees present when the picketing took place (J.A. 32-33; 268-270).

2. The Board's second criterion is that "at the time of the picketing the primary employer is engaged in its normal business at the situs." Gotham is engaged in the broadcasting business and was carrying that on from the Stadium or Rink whenever picketing took place. In fact, about 20 hours out of Gotham's 120-hour-per-week broadcasting schedule during the baseball season is mainly from the ball park, so that about one-sixth of its total broadcasting is of ball games. And about 20% of its annual business comes from baseball broadcasting, although the baseball season lasts only 24 weeks (J.A. 40; 46-48). This is, therefore, a most substantial part of Gotham's normal business.

3. The Board's third criterion is that "the picketing is limited to places reasonably close to the location of the situs". By picketing on the public thoroughfares immediately outside the Stadium and the Rink, the pickets were as "reasonably close to the location of the situs" as they could possibly be without trespassing on private property.

4. The last criterion of the Board is that "the picketing discloses clearly that the dispute is with the primary

employer." The record is clear that the only reference on the picket signs was to "Radio Station WINS", the primary employer. No mention, either directly or indirectly, was made of the Yankees, the Stadium, the Rink, their owners or to any other secondary employer (J.A. 311; 38).

The Court below has, however, in its decision herein adopted the theory of the Board which reads two additional criteria into the four set forth by the Board in its *Moore Dry Dock* decision. These are that there must be no other available location for the union to picket, and that the place picketed must be the place of employment or prospective employment of persons doing the very same work as members of the union. The attempt to read these additional criteria into the *Moore Dry Dock* rule has been expressly rejected by the Courts of Appeals for the Fifth Circuit and for the District of Columbia.

The decision of the Fifth Circuit was in *N. L. R. B.* v. *General Drivers, Warehousemen & Helpers Local Union 968*, 225 F. 2d 205, certiorari denied December 5, 1955, —— U. S. ——.

In its principal brief in the instant case in the Court below, the Board placed great reliance on its own decision in that case and on the decision of the Texas District Court in granting a Section 10(l) preliminary injunction in the same case. The Board argued that since the musicians here involved did not work at the Stadium or the Rink, those places were not the "situs" of the dispute, and that the Union herein could effectively publicize its dispute by picketing the studio.

However, the Fifth Circuit, in a unanimous decision, expressly rejected this "situs" doctrine. Summarizing the Board's position, the Court said (at p. 208):

> "The Board concluded * * * that the union's activity in picketing the construction projects violated Section 8(b)(4)(A) of the Act, because it

> was conducted, 'at least in part', to force the secondary and neutral employers 'to cease doing business with Otis Massey by inducing and encouraging the employees of said employers to engage in a strike'. That ultimate conclusion was predicated mainly upon findings, vigorously attacked here, that the drivers and warehousemen involved were employed 'not at the construction projects but at Otis Massey warehouse', so that the warehouse location was the sole 'situs of the union's dispute', and the place where it could 'adequately publicize' its private controversy with Massey without disrupting work of the other neutral employers."

Denying enforcement of the Board's order in the case, the Fifth Circuit said (at p. 210):

> "* * * no warrant exists either in the language of the statute or the authorities cited which would justify the adoption and approval of its 'situs' theory to an extent inconsistent with other provisions of the Act, or for empowering the Board, under guise of fact-finding to fix the 'situs' of a dispute at only one of a primary employer's numerous business activities, thereby isolating other employees of the same primary employer from exercising their statutory right under Section 7 to engage in mutual aid and protection and to make common cause with their co-workers."

Relying upon the Fifth Circuit's decision in the *General Drivers* case, *supra*, the Court of Appeals for the District of Columbia, in *Sales Drivers, Helpers & Building Construction Drivers, Local 859* v. *N. L. R. B.*, —— F. 2d —— (decided December 8, 1955; No. 12605), likewise unanimously rejected the rigid "situs theory" adopted by the Board and approved by the Court below in the case

at bar. After referring to the four criteria of the *Moore Dry Dock* case, the Court said:

> "The Union here contends that it has met these conditions but that the Board has added another and absolute prerequisite that no situs for effective picketing than the common one be available. While in *Moore Dry Dock* it was a fact that no such separate situs was available, the Board decision did not specify this as one of the conditions for lawful picketing at a common situs. We agree with the Union that in the case at bar the Board has added this condition and has applied a rigid rule that when another such separate situs is available picketing at a common situs is prohibited."

In rejecting this rule, the Court said:

> "Section 8(b)(4)(A) does not contain a provision which condemns concerted activity of employees with respect to their own employer merely because it occurs at a place where it comes to the attention of and incidentally affects employees of another, *even where the activity could be carried on at a place where the primary employer alone does business.* • • • To read it into the statute by implication would unduly invade the application of Section 13 which preserves the right to strike 'except as specifically provided' in other provisions of the Act. It is not specifically provided that picketing at a common site, with an incidental effect upon employees of a neutral employer, is unlawful in every case where picketing could also be conducted against the primary employer at another of its places of business." (Emphasis supplied.)

In the case at bar, it should be remembered, the picketing at the common situs did not even have any "incidental effect upon employees of a neutral employer".

Although this Honorable Court has denied certiorari to the Board in the *General Drivers* case, *supra*, it has never passed directly on the question presented. It should also settle the conflict between the decisions of the Courts of Appeals for the Fifth Circuit and the District of Columbia on the one hand and that of the Second Circuit in the case at bar on the other.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

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APPENDIX A

Opinion of the United States Court of Appeals
For the Second Circuit

No. 35—October Term, 1955.

(Argued October 5, 1955 Decided November 3, 1955.)

Docket No. 23550

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

—v.—

ASSOCIATED MUSICIANS OF GREATER NEW YORK, LOCAL 802, AMERICAN FEDERATION OF MUSICIANS, AFL, and AL MANUTI, its Agent,

Respondents.

Before:

CLARK, *Chief Judge,* and MEDINA and LUMBARD,
Circuit Judges.

Petition by the National Labor Relations Board for enforcement of its order, 110 NLRB No. 269, requiring Associated Musicians of Greater New York, Local 802, American Federation of Musicians, AFL, and Al Manuti, its Agent, to cease and desist from certain unfair labor practices. Enforcement granted.

CLARK, *Chief Judge*:

This is a petition by the National Labor Relations Board for enforcement of its order directing respondent musicians' union and its president and agent, Manuti, to desist from certain unfair labor practices. The Board found that respondents had violated §8(b)(4)(A) of the Act, 29 U. S. C. §158(b)(4)(A), by inducing and encouraging employees of the New York Yankees, the Parkway Sporting Club, Inc., and various employers doing business with the Yankees and Parkway to engage in strikes, an object of which was to force or require these employers to cease doing business with Gotham Broadcasting Corporation.

The basic facts, as found by the Board on report of its trial examiner, 110 NLRB No. 269, are not seriously in dispute. We summarize them as follows: Gotham Broadcasting Corporation owns and operates Radio Broadcasting Station WINS, with offices and studios located at 28 West 44th Street in New York City. The transmitter of WINS, which is connected by telephone circuit to the studio, is located in Lyndhurst, New Jersey. WINS broadcasts, at a power of 50,000 watts, commercial and sustaining programs to audiences in New York and surrounding states and also furnishes programs which are broadcast from radio stations in other states. During 1953 Station WINS, then owned by Gotham's predecessor, Crosley Broadcasting Corporation, furnished services valued at more than $900,000 to various enterprises, approximately half of which were engaged in interstate commerce.

The musicians employed by WINS were represented by the union, respondent in this case. On April 1, 1954, as a result of a dispute over the number of musicians to be employed by Gotham at the radio studio, the union went on strike and commenced to picket at the studio.

WINS carries the broadcast descriptions of baseball games played by the New York Yankees at Yankee Stadium.

The broadcasting rights to Yankee games are owned by River Operating Corporation, which furnishes its own announcers for broadcasts of the games and which purchases time from Gotham for the broadcasts. Game broadcasts are made from Yankee Stadium, where they are relayed by telephone circuit to the WINS studio and thence to the transmitter in New Jersey. In connection with the broadcasts from Yankee Stadium, Gotham provides a portable amplifier, portable microphones, and one engineer (not a member of respondent union) who goes to the Stadium the morning before the broadcast and remains until after its completion. Gotham derives about ten per cent of its revenue from the Yankee Stadium broadcasts and an additional ten per cent from pre- and post-game broadcasts made from the studio.

The American League franchise for the New York Yankees is owned by a partnership which leases the Yankee Stadium, and which also employs the players and certain other clerical and promotional employees who work there. The partnership has a contract with River Operating Company, Inc., whereby River operates and manages the Stadium. River, in turn, employs a superintendent, ticket sellers, clerks, and others who work at the Stadium. River also has a contract with Allied Maintenance Corporation, whose employees perform various service functions connected with the baseball games and who work at the Stadium. There are, in addition, two other concessionaires who furnish refreshments, and whose employees work at the Stadium. On game days, employees of various news disseminating agencies, such as radio, television, telegraph, and newspapers, are employed at the Stadium. The musicians employed by Gotham did not, however, work there.

On April 1, 1954, when the strike against Gotham began, respondent union sent a telegram to one of the co-owners of the Yankees requesting that he use his "good offices and

influence'' in effecting a settlement between the union and Station WINS. On April 10, 1954, the union began to picket Yankee Stadium around its entire perimeter, with the result that picketing covered employee and delivery, as well as public, entrances. Picketing continued on game days until May 24 and was enjoined on May 27, 1954. *Douds* v. *Associated Musicians of Greater New York, Local 802*, D. C. S. D. N. Y., 123 F. Supp. 798. The picketing commenced each day after a majority of the employees of the concessionaires and other employers had entered the Stadium and coincided with the opening of the gates to the general public.

The regular baseball season was scheduled to begin on April 15, 1954, with traditional ceremonies, including the playing of the National Anthem by the Seventh Regiment Band, whose members belong to the respondent Union. The Band is under the direction of Francis W. Sutherland, a retired Army Major, who books its engagements, employs and pays its musicians, and leads its playing. On April 13 and 14, 1955, there were two telephone conversations between respondent Manuti and Major Sutherland regarding the possibility of picketing at Yankee Stadium on April 15. Sutherland stated that as a union member he could not cross the picket line. On the appointed day, the Band assembled at the Seventh Regiment Armory in preparation for its engagement at Yankee Stadium. But when it failed to receive word of a strike settlement by 10:45 a.m., Major Sutherland dismissed it and it did not play at the ceremonies.

Between April 12 and April 14, Edwin B. Fisher, Director of Promotion of the Yankees, had three telephone conversations with respondent Manuti, during which Fisher attempted to persuade Manuti to allow the Band to play. Fisher offered to have the Gotham microphone removed from the Stadium while it was playing if this action would

make the engagement acceptable to the union. Manuti, however, indicated that such a removal would not be sufficient and suggested instead that the Yankee management use its influence to have Gotham reach a settlement. He made it clear that without such a settlement the Band would not be permitted to play.

Gotham Broadcasting Corporation (Station WINS) was also under contract with the Parkway Sporting Club, Inc., operating the Eastern Parkway Rink in Brooklyn, New York, to broadcast accounts of boxing exhibitions given at the Rink each Monday night. In connection with these broadcasts Gotham provides at the Rink a portable amplifier, portable microphones, an engineer, and sportscasters. Parkway also leases food, refreshment, and other concessions at the Rink to various firms, whose employees work there. But no musicians from WINS are there employed.

Between 6:00 and 7:00 p.m. on April 12, 1954, respondent union began to picket at the Rink in front of the main entrance, which is used by most of the employees of Parkway and of the concessionaires operating inside the Rink, as well as by patrons. On the evening of April 12 during the time that respondent union was engaged in picketing, some of the employees of Parkway and of the concessionaires were arriving for work.

Shortly after commencement of the picketing it came to the attention of certain members of the management of Parkway, who immediately communicated by telephone with officials of the union. Upon being informed that the reason for the picketing was that fight broadcasts were going out over Gotham facilities, the Parkway management agreed to submit a letter promising to prevent Gotham from broadcasting and to order the removal of its equipment from the Rink until the settlement of the dispute between Gotham and the union. After delivery of the letter to a representative of the union the pickets were withdrawn

before 8:00 p.m. No further broadcasts were made from the Rink until May 31, 1954, or after the injunction against picketing by respondent union had issued.

The picket signs at both the Yankee Stadium and the Rink read: "Musicians of Radio Station WINS are on Strike, Local 802, American Federation of Musicians, affiliated with the American Federation of Labor." The picketing at both locations was peaceful. None of the employees at either location actually engaged in a strike as a result of the picketing.

There is substantial evidence on the record considered as a whole to support the finding of the Board that an object of the picketing was to bring about a strike or concerted refusal to work on the part of employees at Yankee Stadium and at the Eastern Parkway Rink; we therefore accept it. *Universal Camera Corp.* v. *NLRB*, 340 U. S. 474. The union makes the claim that the only purpose of the picketing was to publicize its dispute with Gotham. But the evidence shows that at least one of its objectives was to apply pressure to the secondary employers for the purpose of causing them, in turn, to threaten Gotham with loss of business unless it came to terms with the union. The urgings to the Yankee management to "talk sense into their [the Gotham management's] heads" and to "use their good offices" clearly indicate the purpose of the picketing at the Stadium. At the Rink the fact that picketing immediately ceased when Parkway promised to keep Gotham off the premises makes the purposes of that picketing quite clear. Requests and threats addressed by respondents to employers, even though not illegal in themselves (*Rabouin* v. *NLRB*, 2 Cir., 195 F. 2d 906, 911-912), may be considered in determining the motives for picketing. *NLRB* v. *Denver Bldg. & Const. Trades Council*, 10 Cir., 193 F. 2d 421, 423-424.

It is true that the Stadium picketing began each day at the time when the gates were being opened to the public

and after most, but not all, employees had reported for work. Picketing, however, covered all entrances, not merely the public entrances; and there was no indication from the signs carried by the pickets that employees were not being encouraged to strike. At the Rink picketing took place while employees were arriving for work. Thus there is substantial evidence that at both locations respondents' actions constituted inducement and encouragement to strike. "The reluctance of workers to cross a picket line is notorious." *Printing Specialties and Paper Converters Union, Local 388, A. F. L.* v. *Le Baron*, 9 Cir., 171 F. 2d 331, 334. See also *Piezonki* v. *NLRB*, 4 Cir. 219 F. 2d 879; Teller, *Picketing and Free Speech*, 56 Harv. L. Rev. 180, 200-208.

Respondents argue that, since no employees of the secondary employers in fact engaged in a strike, there has been no violation of §8(b)(4)(A) of the Act. They contend that the words "induce and encourage" used in that section refer only to a successful inducement and encouragement; where no actual strike or concerted refusal to work ensues, no violation can be found. This view, however, is supported neither by common understanding of the meaning of these words nor by authority. *NLRB* v. *Denver Bldg. & Const. Trades Council, supra*, 10 Cir., 193 F. 2d 421. See also *International Brotherhood of Electrical Workers, Local 501, A. F. of L.* v. *NLRB*, 341 U. S. 694, 702 n.7. The legislative history of the Act also indicates that success was not intended to be an essential element of a violation of §8(b)(4)(A). Thus the report of the Senate Labor Committee, where the bill originated, stated: "Under paragraph (A) strikes or boycotts, or *attempts* to induce or encourage such action, are made violations of the Act if the purpose is * * *." (Sen. Rep. No. 105, 80th Cong., 1st Sess. 22-23, in 1 Leg. Hist. of the Labor Management Rel. Act 428; emphasis added.) The actual language of the bill commented on by this report was "to engage in, or to induce or

encourage the employees of any employer to engage in" a strike for specified purposes. This language is identical with that of the Act as finally enacted. Commenting on identical language of the bill, the House Conference Committee said: "Under clause (A) strikes or boycotts, or *attempts* to induce or encourage such action, were made unfair labor practices if the purpose was * * *." (H. Conf. Rep. No. 510, 80th Cong., 1st Sess. 43, in 1 Leg. Hist. of the Labor Management Rel. Act 547; emphasis added.) Hence it is clear that no employee of the secondary employer need actually engage in a strike in order that a violation of the Act be found.

The case of *Joliet Contractors Ass'n* v. *NLRB*, 7 Cir., 202 F. 2d 606, certiorari denied 346 U. S. 824, cited by respondents in support of their view, concerns itself with the question whether the maintenance of union by-laws directed at prospective employers can constitute a violation of the Act. No picketing was involved in that case, and the present issue was not decided. There the basis of decision was not whether the union's efforts were successful, but whether the actions induced or encouraged were concerted activities undertaken in the course of the employees' employment.

Our recent decision in *Douds* v. *Local 50, Bakery and Confectionery Workers International Union*, 2 Cir., 224 F. 2d 49, also cited by respondents, concerns an alleged violation of §8(b)(4)(C) of the Act, the section applicable to picketing for the purpose of forcing an employer to recognize a labor organization after another such organization has been properly certified. In that case we found that the picketing involved was not intended to induce present concerted action, but rather to propagandize and recruit members for the picketing union with an aim to representing a majority of employees in the future. It was there argued that, since the union must be held to intend the foreseeable consequences of its conduct, an illegal intent

might be "presumed" from the mere fact of picketing. But we said that such a presumption was hardly valid where the consequences did not in fact follow. This is far from saying that under no circumstances can an illegal intent be found unless the intent is translated into an actual work stoppage.

Respondents further contend that the strikes at the Stadium and Rink may be justified by application of the "situs of the dispute" doctrine, approved by us in *NLRB* v. *Service Trade Chauffeurs, Salesmen and Helpers, Local 145*, 2 Cir., 191 F. 2d 65. This doctrine protects strikes in some cases at a location where the struck employer is engaged in normal business, though such location is not his main place of business and is the place of business of some secondary employer. Tests to determine when the doctrine shall apply are laid down in *Moore Dry Dock Co. (Sailors' Union of the Pacific)*, 92 NLRB 547, and have been widely approved in the cases. See *NLRB* v. *Service Trade Chauffeurs, Salesmen and Helpers, Local 145, supra*, 2 Cir., 191 F. 2d 65. *Piezonki* v. *NLRB, supra*, 4 Cir., 219 F. 2d 879; *NLRB* v. *Chauffeurs, Teamsters, Warehousemen & Helpers Local Union No. 135*, 7 Cir., 212 F. 2d 216; *NLRB* v. *Local Union No. 55*, 10 Cir., 218 F. 2d 226.

In our case the picketing does not come within the approved area of exception defined by the *Moore Dry Dock* criteria because neither the Stadium nor the Rink was at any time the situs of the dispute between the union and Gotham. The musicians worked at the studio, which could be readily, and in fact was, picketed. The musicians never worked at either of the secondary locations, and there was no connection between the musicians and broadcasts made from the Stadium or the Rink.

In *NLRB* v. *General Drivers, Warehousemen & Helpers, Local 968*, 5 Cir., —— F. 2d ——, because of extraordinary circumstances surrounding the labor dispute, the Fifth

Circuit departed from a purely mechanical application of the *Moore Dry Dock* doctrine. There the four truck drivers and warehousemen involved in the dispute were employed for the most part at their employer's warehouse and only occasionally made deliveries at the various construction projects where the great majority of their fellow employees worked. Employees of other contractors also worked at these construction sites. The union representing the four employees called a strike and commenced to picket at both the warehouse and the common construction sites. The Labor Board concluded that the picketing at the common sites was illegal, since only the warehouse was the "situs" of the dispute. But the Court of Appeals reversed, holding that a too mechanical application of the "situs" doctrine could not be permitted to override the statutory purpose to preserve the right to conduct a primary strike. It concluded that widespread court approval of the *Moore Dry Dock* criteria was necessarily based upon substantial evidence that the unlawful objective denounced by the statute actually existed. The opinion points out that under the circumstances of that case:

> "Unless the truck drivers and warehousemen, only four in number, could persuade the other employees of Otis Massey to decline to do their employer's installation work until the strike was settled, it is obvious that the strike was foredoomed to failure from its inception, for picketing only at the warehouse 'situs' where such other employees almost never came was but a useless and futile gesture."

The court there noted that the union was scrupulously careful to inform the secondary employers, the public, and the employees approaching the picket line (by signs, handbills, or verbal statements) that the dispute in no way involved any secondary employers. But here the considera-

tions which led the Fifth Circuit to look beyond a determination of the "situs" of the dispute do not exist. It was clearly not necessary for the respondent union to picket the common premises in order to reach the other employees of the primary employer. At most three of these other employees worked at the common premises—the Stadium or the Rink—while some sixty-five Gotham employees were employed at the studio of WINS, which respondent union was picketing. Furthermore, the few Gotham employees who ever went to the common premises spent a portion of their working time at WINS and hence could be reached by picketing there. In addition, unlike the *General Drivers* situation, where the striking workers sometimes were present at the common premises making deliveries, here the musicians never worked at the common premises.

There is another point of material distinction between the two cases in that here respondents sought to involve secondary employers in the dispute with Gotham, while in the *General Drivers* case the strikers took positive steps to confine the dispute solely to the primary employer. We have no reason to conclude that the respondent union's right to conduct a primary strike has been inordinately infringed by the prohibition of picketing at the common premises. Under the circumstances here presented the right to conduct a primary strike can be fully exercised by activity at the situs of the dispute, the radio studio. The rationale of the *General Drivers* decision is entirely absent.

Respondents further contend that neither exhibition baseball nor exhibition boxing constitutes interstate commerce, and hence the secondary boycott provisions of the Act do not cover the business of the Yankee Baseball Club or of the Parkway Sporting Club. Although respondents do not argue that the business of Gotham is outside the coverage of the Act, they assert that the business of the primary employer is of no significance in determining the jurisdic-

tion of the Board in secondary boycott matters. Since this contention was not raised before the Trial Examiner and the Board, we are directed by §10(e) of the Act not to consider it unless the neglect to raise it is excused because of extraordinary circumstances. Such circumstances are entirely lacking here. *Marshall Field & Co.* v. *NLRB*, 318 U. S. 253, 255; *NLRB* v. *American White Cross Laboratories*, 2 Cir., 160 F. 2d 75, 78 n.4; *NLRB* v. *Pappas & Co.*, 9 Cir., 203 F. 2d 569, 570-571.

But in any event, the objection has little merit. There is nothing to suggest that the Yankees, Parkway, and the other secondary employers protected by the Board's order are not engaged in activities "affecting commerce" within the meaning of §§2(7) and 10(a) of the Act. Cases cited by respondents determining the scope of coverage of the Sherman Antitrust Act, 15 U. S. C. §1, are not necessarily controlling of matters under the National Labor Relations Act §§2(6), 2(7), and 10(a). See *Federal Baseball Club of Baltimore* v. *National League of Professional Baseball Clubs*, 259 U. S. 200, 26 A. L. R. 357; *Toolson* v. *New York Yankees*, 346 U. S. 356. But see *United States* v. *International Boxing Club of New York*, 348 U. S. 236, 242; *United States* v. *Shubert*, 348 U. S. 222, 230. Further, some of the secondary employers doing business at the Yankee Stadium and Parkway Rink were newspapers, wire services, photographers, telegraph companies, certain refreshment vendors and others, the interruption of whose activities by a work stoppage would "affect commerce" within the meaning of §§2(7) and 10(a) of the Act. *Polish National Alliance* v. *NLRB*, 322 U. S. 643, 647-648; *International Brotherhood of Electrical Workers, Local 501* v. *NLRB*, 2 Cir., 181 F. 2d 34, 36-37, affirmed 341 U. S. 694; *NLRB* v. *Dixie Terminal Co.*, 6 Cir., 210 F. 2d 538, 539, certiorari denied *Dixie Terminal Co.* v. *NLRB*, 347 U. S. 1015, 348 U. S. 952.

In any event it is doubtful under the Act whether coverage of the secondary employer need be established independent of coverage of the primary employer. Respondents do not deny that there was proper jurisdiction over Gotham. They contend, however, that the secondary boycott provisions of the Act are intended solely for the protection of the secondary employer and that the business of the primary employer should not be considered in determining jurisdiction of secondary boycotts. We think the better view is that the secondary activity is but an extension of the labor dispute with the primary employer and that the businesses of both employers are to be considered in determining jurisdiction of the secondary activity. The opposite conclusion would require the fragmenting of the authority of the Board over labor disputes—a result which, lacking specific legislative command, we should shun. See *Truck Drivers Local Union 649 (Jamestown Builders Exchange)*, 93 NLRB 386; *McAllister Transfer, Inc.*, 110 NLRB 1769.

Respondents also claim that their activities were directed to secondary employers, and not to employees, and were therefore not illegal. See *Rabouin* v. *NLRB, supra*, 2 Cir., 195 F. 2d 906, 911-912. But as we have already pointed out, the Board was justified in finding that the picketing at the Stadium and the Rink was in part at least intended to influence employees at those locations.

The petition for enforcement of the Board's order is granted.